

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 629/August 9, 2006

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12064

In the Matter of	:	
	:	ORDER DENYING MOTION TO
	:	CORRECT MANIFEST ERRORS
GREGORY M. DEARLOVE, CPA	:	OF FACT
	:	
	:	
	:	
	:	

On July 27, 2006, I issued an Initial Decision in this proceeding. On August 8, 2006, Respondent Gregory M. Dearlove, CPA (Dearlove), filed a motion to correct eight manifest errors of fact in the Initial Decision. See Rule 111(h) of the Rules of Practice of the Securities and Exchange Commission (Commission).

Rule 111(h) of the Commission’s Rules of Practice allows a party to file a motion to correct a manifest error of fact within ten days after issuance of an Initial Decision. It also provides that an Administrative Law Judge (ALJ) shall rule on a motion to correct. Finally, Rule 111(h) explains that a motion to correct is properly filed “only if the basis for the motion is a patent misstatement of fact in the initial decision.” Under Rule 410(b) of the Commission’s Rules of Practice, a party is afforded a twenty-one-day extension of time to file a petition for review from the date of the ALJ’s order resolving the motion to correct. The Commission has not yet determined whether the twenty-one-day extension is automatic in all situations, or excludes situations in which a motion to correct has been made for an improper tactical purpose.

Dearlove alleges that the Initial Decision improperly weighs certain evidence, omits two of his proposed factual findings, and contains “ambiguities” that should now be “clarified.” I find no merit to these claims. I also find that these are not “patent misstatements of fact” that could support a legitimate Rule 111(h) motion. Indeed, some of them are conclusions of law that Dearlove mischaracterizes as findings of fact solely to bring them within the scope of Rule 111(h). These matters should be raised before the Commission in a petition for review.

I consider this motion a stalling tactic—an abuse of Rule 111(h), causing unnecessary delay—to afford Dearlove additional time to formulate the issues he intends to present to the Commission in his petition for review. I will leave it to the Commission to determine whether a

party should be rewarded with an automatic twenty-one-day extension of time to file a petition for review if that party's motion to correct has been made for an improper tactical purpose.

The Initial Decision cites the Commission's Opinion in Rita J. McConville, 85 SEC Docket 3127 (June 30, 2005). The parties should note that McConville is the subject of a petition for judicial review (7th Cir. No. 05-3510). Appellate briefing has been completed, oral argument has been held, and a decision is pending in that matter.

IT IS ORDERED THAT Dearlove's motion to correct eight manifest errors of fact in the Initial Decision is denied.

James T. Kelly
Administrative Law Judge